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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/038,939

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Robert M. Fitzgerald

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EXAMINER

JACKSON, BLANE J

ART UNIT

PAPER NUMBER

2618

MAIL DATE

DELIVERY MODE

10/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/038,939

Applicant(s)

FITZGERALD, ROBERT M.

Examiner

Blane J. Jackson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 7, 12, 15, 17-21, 23-25, 27, 31-33, 35, 37, 39, 42, 43, 47, 51, 52, 54 and 60-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

Continuation of Disposition of Claims: Claims pending in the application are 1-4,6,7,12,15,17-21,23-25,27,31-33,35,37,39,42,43,47, 51,52,54 and 60-63

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1-4, 6, 7, 12, 15, 17-21, 23-25, 27, 31-33, 35, 37, 39, 42, 43, 47, 51, 52, 54 and 60-63 have been considered but are moot in view of the new ground(s) of rejection. Further search of the prior art with respect to the amended distinction of a rotatable connection on a vertical axis of the headband and speaker/ microphone assembly to reconfigure headset to a handset is essentially taught in O'Malley et al.

Specification

The amended Specification and Abstract received in the Supplemental Response filed 17 September 2007 are accepted.

Claim Objections

Claims 1, 35, 37 and 63 are objected to because of the following informalities: the amended claim language "wherein said headband and aid telephone control are each rotatable about said vertical axis to a non-head worn configuration of said headband to the head of a user and to a hand-held configuration of said headband and said telephone control." introduces a new concept of a "non-head worn configuration" which apparently corresponds to a hand-held configuration" as opposed to "head-worn configuration". Also, the cited "hand-held configuration of said headband and said

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telephone control” of this amendment essentially repeats the other amended claim section with no new subject matter and appears to duplicate the meaning of the “non-head worn configuration”. An amendment to disclose the specific mechanism and application of the vertical axis pivot of the invention is suggested.

Claim 20 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of the two configurations cited in claim 1. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 7, 12, 15, 19-21, 23-25, 35, 37, 39, 42, 43, 47, 52, 54, 61 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mack, II et al. (U.S. Patent 5,991,637) with a view to O'Malley et al. (US 4,634,816).

As to claims 1, 35, 37 and 63, Mack teaches a wireless telephone headset system, apparatus and method of configuring a cordless telephone headset system for use comprising:

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A headband having two distal ends (figures 1 and 2, column 3, lines 23-46 and column 4, line 61 to column 5, lines 15).

A telephone control having a speaker and telephone call control (figure 8a, 8b, 11, column 8, lines 33-40, control panel (504) and speaker (202)),

A microphone connected with said telephone control (figure 8b, column 8, lines 41-49, microphone and boom (210)).

A rotatable connection of said headband with said telephone control at a distal end of said headband (figure 11, hinge (1102), column 9, lines 23-31).

Mack teaches a hinge (figure 11, hinge (1102) or the like mounted above the telephone control to form part of a folding headband for storage purposes but does not teach a rotatable connection on a vertical axis of said headband and said telephone control at said distal end of said headband and rotated about said vertical axis to a head-worn configuration and a hand-held or non-head worn configuration.

O'Malley teaches a communications headset with earpiece assembly (12) together with the microphone boom (16) pivoted on a vertical axis in its stirrup, figures 1, 8 and 11, column 4, lines 54-62. O'Malley discloses the earpiece assembly can be held in a hand and positioned against an ear without the headband being over the users head, column 1, lines 15-38 and column 4, lines 54-58.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the hinge of Mack with the vertical axis pivot of O'Malley so that the headset can be configured to be used as a conventional headset or handset, obtained by the particular orientation of the pivot axis.

As to claim 2, Mack teaches a wireless telephone headset system as described in claim 1 wherein the telephone control comprises a dial pad (figure 8a, column 8, lines 33-37, control panel buttons (802) used to dial a phone number).

As to claims 3 and 42 with respect to claims 1 and 37, O'Malley of Mack modified teaches the telephone control and said headband are rotatable less than 180 degrees of rotation (figure 11, column 1, lines 15-3, about 120 degrees for the earpiece with microphone boom).

As to claims 4 and 43 with respect to claims 1 and 37, O'Malley of Mack modified teaches the telephone control and said headband are rotatable less than 360 degrees of rotation (figure 11, column 1, lines 15-3, about 120 degrees for the earpiece with microphone boom).

As to claim 6 with respect to claim 2, Mack teaches an earpiece adjacent the one of the distal ends of the headband wherein the dial pad is transversely adjacent the earpiece (figure 8a and 8b, dial pad (802) opposite earpiece (202), and to identify the headset speakers or earpiece (202): column 3, lines 47-60).

As to claim 7 with respect to claim 1, Mack a microphone boom having two distal ends wherein the microphone is positioned adjacent one of the distal ends of the boom

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and wherein a second distal end of the microphone boom is pivotally connected to the phone control (figure 8b, column 8, lines 41-47).

As to claim 12 with respect to claim 7, O'Malley teaches the microphone boom is configured to accommodate both a user left ear configuration and a user right ear configuration (figures 1 and 3, column 1, lines 26-31 and column 5, lines 6-13, boom can be positioned slightly less than a 360 degree rotation).

As to claims 15, 20 and 21 with respect to claims 12 and 1, O'Malley teaches the telephone control and said headband are configured to accommodate both a user left ear configuration and a user right ear configuration (figure 11, column 5, lines 6-13).

As to claim 19 with respect to claim 2, Mack teaches the key pad comprises a plurality of input elements (figure 5, 8a, operator control panel (504) for telephone or radio, column 6, lines 3-12).

As to claim 23 with respect to claim 21, O'Malley of Mack modified teaches the telephone control and said headband are rotatable to accommodate a user configuration within a corresponding rotation of zero to 90 degrees (column 1, lines 15-38).

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As to claim 24 with respect to claim 1, O'Malley of Mack modified teaches the telephone control and said headband are rotatable to accommodate an aligned configuration of said telephone control with said headband and a plurality of offset configurations of said telephone control with said headband (figure 11, column 1, lines 33-38).

As to claim 25 with respect to claim 1, Mack teaches a portable wireless portable telephone/ radio with control circuitry and an optional motorized antenna (figure 6) but does not specifically disclose a headset comprising a power source comprises a battery fixedly connected to the second distal end of the headband. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to necessarily include a battery in the system of Mack to source a portable radio type device.

As to claims 39, with respect to claim 37, Mack teaches the step of configuring the microphone comprises rotating said microphone (figures 8a and 8b, column 8, lines 41-49, microphone boom (210)).

As to claims 47 and 52 with respect to claim 37, O'Malley of Mack modified teaches the step of configuring the microphone comprises configuring a microphone boom of said wireless telephone headset system to accommodate a user left ear configuration and a user right ear configuration (figure 11, column 5, lines 6-13).

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As to claim 54 with respect to claim 52, O'Malley of Mack modified teaches the step of rotating comprises rotating zero to at least 90 degrees (figure 11, column 1, lines 15-38).

As to claim 61, Mack teaches a method of configuring a cordless telephone headset system as described in claim 37 further comprising the step of providing computer capability to the cordless telephone system (figure 5, controller (502), column 6, lines 3-12).

Claims 17, 18 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mack, II et al. (U.S. Patent 5,991,637) and O'Malley et al. (US 4,634,816) in view of Magnasco et al. (U.S. Patent 6,016,347).

As to claims 17, 18 with respect to claim 7 and claim 51 with respect to claim 37, Mack teaches the microphone is rotated down to switch the wireless telephone to the in use or off hook condition (column 8, lines 41-49) but does not teach the microphone boom comprises a mute switch.

Magnasco teaches a headset where the rotated boom position signals the telephone control for standby mute or talk modes (figure 2, column 3, lines 25-67). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the microphone boom switch of Mack modified to include the additional telephone control modes of Magnasco for further convenience to the user of the telephone functions.

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Claims 27, 31, 32 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mack, II et al. (U.S. Patent 5,991,637) and Hall et al. (US 6,754,361) in view of Silver (U.S. Patent 4,882,745).

As to claims 27 and 31 with respect to claim 1, Mack modified teaches a headset and a method of configuring a cordless telephone headset to be used with a base station, Mack: column 3, lines 23-46, but do not teach a base correspondingly configured to a substantially upright orientation of the headband and the telephone control.

Silver teaches a cordless headset telephone system comprising a headset and cradle or base, the base configured with a receptacle corresponding to at least a portion of the telephone control and at least a portion of a second distal end of the headband and the base receptacle is configured to hold the headband and the telephone control in a substantially upright position, figure 3 and 6, column 5, lines 6-29 and column 7, lines 36-50. Since Silver also teaches the cradle having charging contacts for the headset battery (column 1, lines 27-41), it would have been obvious to one of ordinary skill in the art at the time of the invention to identify in the base station of Mack the headset cradle of Silver so as to make the headset available to the user in a convenient manner and to provide positive positioning of the headset for connection and charging of the headset battery.

As to claim 32 with respect to claim 27, Silver of Hall modified teaches the telephonic control circuitry responsive to said telephone control and said base wherein

said telephone control comprises at least a portion of said telephonic control circuitry (figure 6, column 7, lines 36-49, headset keypad (54)).

As to claim 60 with respect to claim 59, Mack does not teach a method of configuring a cordless telephone headset system comprising the step of charging a power source positioned adjacent a second distal end of the headband.

Silver teaches two battery charging contacts disposed on the headset to connect to the base when the headset is at rest on the headset cradle (column 4, lines 1-15). Even though Silver does not specify the specific location of the charging contacts, it would have been obvious to one of ordinary skill at the time of the invention to modify Mack modified with the charging contacts of Silver placed where the headset comes in contact with the base in the storage position.

Claims 33 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mack, II et al. (U.S. Patent 5,991,637), Hall (US 6,754,361) and Silver (U.S. Patent 4,882,745) and further in view of Babitch et al. (U.S. Patent 5,930,719).

As to claims 33 and 62 with respect to claim 27 and 61, Mack modified teaches a telephone headset system but does not teach the base is configured for computer compatibility.

Babitch teaches a cordless handset system where the base station includes a connection to the wireless handset, telephone network and modem communication with a desktop computer (figure 1, column 2, line 65 to column 3, line 30).

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It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the headset telephone system of Mack modified with the advantages of a computer connection as taught by Babitch for the functionality of a diction system from headset to the desktop computer or the functionality of an audio e-mail center.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

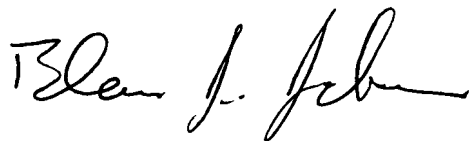
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blane J. Jackson whose telephone number is (571) 272-

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7890. The examiner can normally be reached on Monday through Thursday, 7:30 AM-6:00 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban can be reached on (571) 272-7899. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Brian J. Johnson". The signature is fluid and cursive, with the first name "Brian" being more legible than the last name "Johnson".